

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

PHILLEATRA GAYLOR (<i>Pro Se</i>),)	
)	
Plaintiff,)	CASE NO. 1:15-CV-185
v.)	(Reeves/Steger)
)	
OWEN SMITH, Circuit Librarian,)	
U.S. Court of Appeals for the Sixth Circuit;)	
CLARENCE MADDOX, Circuit Executive,)	
U.S. Court of Appeals for the Sixth Circuit;)	
MEGAN LYNESS, Federal Property Manager,)	
U.S. General Services Administration; and)	
CLIFFORD L. MOSLEY, Representative,)	
Environmental Health Services,)	
)	
Defendants.)	

**REPLY TO PLAINTIFF’S RESPONSE TO SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS**

The United States of America, on behalf of Defendants Owen Smith, Circuit Librarian, U.S. Court of Appeals for the Sixth Circuit; Clarence Maddox, Circuit Executive, U.S. Court of Appeals for the Sixth Circuit; and Megan Lyness, Federal Property Manager, U.S. General Services Administration (“GSA”), by and through Nancy Stallard Harr, Acting United States Attorney for the Eastern District of Tennessee tenders this reply to Plaintiff’s response to Defendants’ memorandum as a supplement to the motion and brief filed in the District Court in the Northern District of Georgia (Doc. No. 5).

FACTS

Plaintiff is a former employee of the Sixth Circuit Court of Appeals. Plaintiff filed this pro se complaint claiming that her termination was wrongful. Defendants filed a motion to dismiss and a supplement and Plaintiff responded. This reply addresses only matters in the response as per Local Rule 7.1(c).

ARGUMENT

1. Megan Lyness should be dismissed as a named Defendant.

Plaintiff seems to center on injuries caused her in the work place. It appears that all those injuries would be covered under the Federal Employees Compensation Act (“FECA”) 5 U.S.C. § 8102. Since Plaintiff is not a GSA employee such a claim would not be filed with GSA. In any case, Ms. Lyness would not be a proper Defendant.

There continues to be no set of facts in the complaint, or the response, under which Ms. Lyness in her official capacity as an employee of the GSA could be a proper Defendant in an employment suit, nor are there significant Constitutional issues plead in detail sufficient to survive a motion to dismiss for qualified immunity or otherwise.

2. The termination of Plaintiff was not treated under the EDR Plan protocol since she did not exercise that option.

As noted in the supplemental brief and the documents attached thereto, as to the removal action Plaintiff did not invoke her rights under the Sixth Circuit’s EDR Plan (the “Plan”), but rather pursued this under the Sixth Circuit Employee Manual as an Adverse Action. Plaintiff appears to contend now that she was subjected to discrimination and retaliatory treatment. That allegation was not made at the time adverse action was taken and the Plaintiff was terminated under those adverse action procedures based on her insubordinate conduct. The Plaintiff did not invoke rights or procedures under the Plan either prior to the notice of adverse action, during the adverse action consideration, or during appeal of the adverse action.

Plaintiff did not seek counseling within 30 days under the Plan or otherwise utilize the Plan as she had on prior occasions and as she was told to do in Mr. Maddox’s emails and letter

of September 27, 2013. *See* EDR Plan Chapter X, Section 8, and administrative records filed with prior brief. As such, none of the rights under the Plan ever were brought into play as to the termination claim and all the rights due Plaintiff have been provided.

CONCLUSION

Both Mr. Mosley and Ms. Lyness should be dismissed as they are not proper parties. The Court lacks subject matter jurisdiction over the remaining claims, the claims should be against the employer, and they should likewise be dismissed.

Respectfully submitted,

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Acting United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2015, a copy of the foregoing Reply was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. Mail. Parties may access this filing through the Court's electronic filing system. Specifically, this document was sent to Plaintiff via First Class Mail, complete with adequate postage, addressed to:

Philleatra Gaylor, Pro Se
740 Lakeview Avenue, NE
Atlanta, GA 30308

/s/M. Kent Anderson
M. Kent Anderson
Assistant United States Attorney